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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/021,956	02/11/98	KATZ	R 232/117

022249
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SUITE 4700
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LM02/0608

EXAMINER	
WOO, S	
ART UNIT	**PAPER NUMBER**
2743	10

DATE MAILED: 06/08/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/021,956	Katz
Examiner	**Group Art Unit**
Stella Woo	2743

☒ Responsive to communication(s) filed on *Mar 8, 1999* .

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *24-148* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *24-148* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

1. The terminal disclaimer filed on March 8, 1999 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Pat. No. 4,792,968 has been reviewed and is accepted. The terminal disclaimer has been recorded.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 77-78, 81-82, 127-128 are rejected under 35 U.S.C. 103(a) as being unpatentable over Entenmann et al. (Entenmann) in view of the reference entitled "The AT&T Multi-Mode Voice Systems - Full Spectrum Solutions for Speech Processing Applications" by Hester et al. (Hester) for the same reasons applied to claims 77-78, 81-82 in the last Office action and repeated below.

Entenmann discloses a telephonic-interface control system for a game of chance comprising:

interface means (col. 2, lines 54-56);

voice generator means (announcement system 17);

processing means (control processor 8);

qualification means (col. 2, line 65 - col. 3, line 4);

means for storing (database 19).

Although Entenmann provides for a plurality of lotteries (plurality of formats) being controlled by the same system (col. 2, lines 47-48), it differs from claims 77-78, 81-82 in that it does not specify the use of DNIS for selecting from the plurality of formats. However, Hester teaches the well known use of DNIS for access to a plurality of formats (page 3, second paragraph) such that it would have been obvious to an artisan of ordinary skill to incorporate the use of DNIS, as taught by Hester, within the lottery system of Entenmann in order to automatically identify the selected lottery format from a plurality of lottery formats using DNIS.

4. Claims 24-76, 79-80, 83-88, 129-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Entenmann in view of Hester, as applied to claims 77-78, 81-82, 127-128 above, and further in view of Barr and Muller et al. (Muller) for the same reasons applied to claims 24, 76, 79-80, 83-88 in the last Office action and repeated below.

The combination of Entenmann and Hester differs from claims 24-76, 79-80, 83-88, 129-148 in that it does not specify a distinct indicia, or bar code number, co-related to at least a portion of the identification number provided on the ticket. However, Barr teaches the well known use of lottery ticket provided with a lottery number to be entered by dialing in to a provided telephone number and Muller teaches the conventional use of a bar code number co-related to the lottery identification number for the purpose of providing a high level of security when verifying winning tickets (Abstract) such that it would have been obvious to an artisan of ordinary skill to incorporate the use of a lottery ticket, as taught by Barr, and the use of a bar code, as taught by Muller, within the combination of Entenmann and Hester.

5. Claims 89-126 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Entenmann, Hester, Barr and Muller, as applied to claims 24-76, 79-80, 83-88, 129-148 above, and further in view of Run, Jr. et al. (Run) for the same reasons given in the last Office action and repeated below.

The combination differs from claims 89-126 in that it does not specify the use of visual indicia illustrative of a specific theme along with a name or numerical value associated with said specific theme. However, as shown by Run (Figs. 1, 2), it is well known in the lottery art to provide for visual indicia illustrating a specific theme along with identification of the particular lottery (which can be either name or numerical value). Since the combination clearly provides for a plurality of different lottery formats (Entenmann provides for a plurality of lotteries which can have different payoff amounts; col. 2, lines 42-48), it would have been obvious to an artisan of ordinary skill to identify the different lottery formats via different visual indicia shown on the lottery card along with either the particular lottery name and/or payoff amount.

6. Applicant's arguments filed March 8, 1999 have been fully considered but they are not persuasive.

Applicant argues that Entenmann does not teach or suggest limiting use to a predetermined interval. Examiner contends that since Entenmann limits the number of times a caller can enter a specific lottery (not lottery service in general)(col. 2, lines 34-39; col. 2, line 55 - col. 3, line 5; col. 3, lines 32-34) and a specific lottery is available only for a predetermined interval of time, then Entenmann clearly provides for limiting use to a predetermined time interval.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning regarding the combination of Entenmann and Hester, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As stated in the rejection above, Entenmann provides for a plurality of lotteries (plurality of formats) being controlled by the same system (col. 2, lines 47-48), and Hester teaches the well known use of DNIS in an interactive telephony system for automatically controlling access to a plurality of formats (page 3, second paragraph) such that it would have been obvious to an artisan of ordinary skill to incorporate the use of DNIS, as taught by Hester, within the lottery system of Entenmann in order to automatically identify the selected lottery format from a plurality of lottery formats using DNIS.

Applicant argues that Entenmann's teaching obviates the need for any ticket. The examiner disagrees. Entenmann states that customers are prompted to call by a sponsor supplied message (col. 4, lines 38-40), and Barr teaches the prompting of calls using a message on a lottery ticket such that it would have been obvious to an artisan of ordinary skill to incorporate the use of a lottery ticket, as taught by Barr, for prompting the customer to call in to the lottery system of Entenmann and Hester.

Regarding the dependent claim limitations, a check digit test is conventional practice in data transmission for ensuring accuracy, Muller was cited in the applied rejection as showing bar code indicia, Entenmann provides for the caller entering additional numerical data in the form of a credit card number which is then recorded for billing (col. 2, lines 64-66), Run was cited in the applied rejection as showing visual indicia, Entenmann shows the use of ANI (col. 2, lines 11-13, 55-57), the specialized telephone systems of Entenmann and Hester are automatic call distributors, and the different categories of winners as identified by at least part of the identification number in Barr can be considered as subformats (col. 4, lines 27-32).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications; please mark "EXPEDITED PROCEDURE")

Or:

(703) 305-9508, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stella Woo whose telephone number is (703) 305-4395 and can normally be reached Monday - Friday, 6:30 a.m. until 11:30 a.m.

June 4, 1999

STELLA WOO
PRIMARY EXAMINER